S.B. Civil Misc. Appeal No.977/2006

Gopal and others.
vs.
Poonalal.

Date : 24.8.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. JK Bhaiya, for the appellants.
Mr. Manish Shishodia, for the respondent.

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Heard learned counsel for the parties.

According to learned counsel for the appellants, the plaintiff's father – Gopal who is defendant no.1/appellant no.1 sold the property to the defendant no.2/appellant no.2 for a consideration of Rs.14 lakhs on 25.1.2006 and gave possession to the appellant no.2. The plaintiff/respondent filed a suit for cancellation of sale deed dated 25.1.2006 to the extent of his share in the property on the ground that the property being ancestral, it could not have been sold by the defendant no.1 alone. In any case, the defendant no.1 could not have sold the share of the plaintiff/respondent. The plaintiff sought injunction in the suit. In the suit, the plaintiff also impleaded his father and brother as defendants no.1 and 3 who are appellants no.1 and 3 in this appeal along with purchaser who is appellant no.2.

The trial court allowed the injunction application and restrained all the defendants from converting the land from agriculture to any other purpose and from regularising the land. The court below also directed both the parties to maintain status quo by order dated 1.3.2006.

Learned counsel for the appellants vehemently submitted that the plaintiff's grand father died before the plaintiff's birth and, therefore, the plaintiff's father alone became the sole owner of the agriculture land. Mutation was entered in the name of the plaintiff's father. The plaintiff's father sold the land to the appellant no.2 after taking huge consideration from her. The plaintiff's father is supporting the case of the defendant no.2. It is also submitted that the plaintiff has not sought relief of partition in the suit, therefore, the suit of the plaintiff is not maintainable.

I have considered the submissions of learned counsel for the parties and perused the reasons given by the court below and facts of the case.

It appears that the court below considered the facts of the case carefully and thereafter, held that prima-facie case is in favour of the plaintiff and held that during pendency of the suit no party should deal with the suit property.

It appears from the facts of the case as well as arguments of learned counsel for the appellants that the

purchaser wants to convert the land from agriculture to non-agriculture purpose and thereby the entire nature of the property will be changed. In these circumstances and looking to the total facts of the case, I do not find that the court below has committed any error of fact or law in granting injunction order to maintain the suit property till the suit is decided.

Consequently, this appeal, having no merit, is hereby dismissed.

However, in the facts of the case, the court below is directed to decide the suit expeditiously as early as possible preferably within a period of one year from the date of receipt of the copy of this order by the trial court. Copy of order be submitted by the appellants before the court below.

(PRAKASH TATIA), J.

S.Phophaliya